1951

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Examined

File No. S. Belgaum 13/51.

Legal DEPARTMENT

E BRANCH

Subject:— Suits: Belgaum.

In the Court of the Civil Judge (S.D.), Belgaum.

Civil Suit No. 128 of 1950.

Ashadevi w/o. Ganpatrao Desai & others. Pltffs.

Vs.

The State of Bombay Deft.

P-14

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File No. S. Belgaum 13/51.

Std. Scott. Slip 24-B

CONTENTS.

Legal Department File No. S. Bel 13/57

Sr. No.	Compilation No.	Subject	Pages.
		Suits Belgaum	
		C. S. No. 128 of 1950	
		Ashaleri w/o. Ganpathrao Desai & others	
		Vs.	
		State of Bombay.	
		For recovering 1200 teak-wood sleepers and 66 tons of teak-wood logs or Rs. 79200 for their value.	1-30

2/1

Below endorsement No.34/D/13086, of 1950-51 dated 3-1-51 from the Chief Conservator of Forests B.S. Poona.

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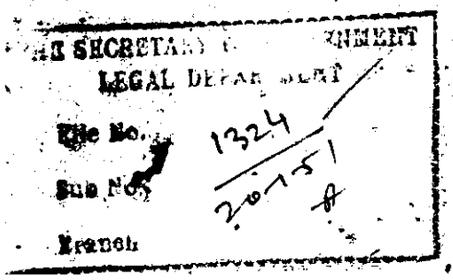
No.L.A.W- 747.

Belgaum, 16th Jan 51.

Forwarded w.cs. to the Remembrancer of Legal Affairs, Bombay.



2. The information regarding regular suit No.128 of 1950 as required under rule 118(1) of the Law Officers Rules is given below:-

i) Special Civil Suit No.128 of 1950.

ii) Filed on 1-4-50 in the Court of the Civil Judge, S.D. Belgaum.

iii) Ahhadevi w/o Ganpatrao Desai, age about 23, residing at Kunnur taluka Chikodi district Belgaum.
ii) Shamrao Gundo Desai age 36, residing at Belgaum.
iii) Gundoba Hanamant Desai age 70 residing at Belgaum. } Pltffs.

Vs.

1. The State of Bombay Deft.

iv) Claims for court fees and jurisdiction. Rs. 57265/-

v) First date fixed for filing the written statement was 30-10-50. The next date fixed is 24-1-1951.

vi) Notice of suit under Section 80 of the Civil Procedure Code was served on the Collector of Belgaum on 1-10-48 and is at page 49 of File No.I.

3. The following papers are sent herewith as required by rule 118(2) of the Law Officers rules:-

(a) A copy of the plaint in English (in duplicate). No documents are annexed to the plaint.

(b) A detailed statement of facts and the grounds on which the suit deserves to be defended are given in resport No. C/1995 of 1950/51 dated 10/12-12-50 from the Divisional Forest Officer Kanara North, Dharwar at page 15 of File No.II and District Govt.Pleader, Belgaum Opinion No.A173 of 1948 dated 22-11-48 at page 56 of File No.I. The chronological statement of facts could not be

Slip A

could not be enclosed as the same is not prepared and sent to this office by the authorities of the Forest - Department.

(c) The papers of the case in two files accompany.

4. The Dist.Govt.Pleader,Belgaum, is being requested to take a long adjournment till Govt.sanction for defence of suit is obtained. Necessary instructions regarding the defence of suit may please be issued.

For Collector of Belgaum.

R.O.S.No.128 of 1950.

In the Court of the Civil Judge, Senior Division, Belgaum.

1. Ashadevi w/o Ganapatrao Desai, caste Hindu, age about 23, occupation Household work - resident of Kunnur, taluka Chikodi.
2. Shamrao Gundo Desai, caste-do- age about 36, Occupation trade, resident of Belgaum.
3. Gundoba Hanamant Desai, caste Hindu, age about 70, occupation trade, resident of Belgaum.

) plffs

Vs.

1. The state of Bombay:) Deft.

Claim Rs. 57,265/- for Court fees and jurisdiction.

In this the plffs above named beg to state as follows:-

(1) One Mr.Ganpatrao Gundo Desai of Belgaum died on 2-11-49 leaving behind him, the plffs, 1 to 3 as his nearnest - relatives, they being his widow brother and father respecti--vely. There was an award between the plffs in respect of the estate of the said deceased G.G.Desai and these plffs have become entitled to the subject matter of this suit as per terms of that award i.e. plff is entitled to and the defts 2 and 3 are together entitled to ½ of the subject matter of the suit and the decree that may be passed in this suit.

2. The deceased Ganapat Gundo Desai was a timber merchant and building contractor, carrying on that buisness at Belgaum and other neighbouring big places. He used to undertake the construction and the repairing of Govt. buildings and also the making and supply of furniture and building materials to Govt. offices and Public instructions. With a view to carry out these works, Govt. used to undertake to supply, and the deceased used to be supplied with the necessary timber and other materials by Govt. at the scheduled rates fixed by them. The understanding between him and Govt. being that he was to utilise the timber and other materials supplied by Govt in supplying theneeds of Govt.

3. In the year 1944, the deceased G.G.Desai had under--taken to supply furniture to the Income-Tax Officer, D.I.G. office, P.W.D. office, Excise Office, C.I.D. office and posts and Telegraphs offices. On being satisfied that teak wood was - needed by him for making and supplying furniture to Govt...

Offices, the Conservator of Forests, S.C. had sanctioned in his favour, the supply of 1200 teak-wood sleepers by his order No. ~~---~~d 28/4/185 dated 15-8-44 and also of 60 tons of teak wood by a subsequent order No. 28/4/321 dated 3-10-44. The deceased then approached the authorities in charge of the teak wood several times and offered to deposit the sum that he might be ordered to deposit and take delivery of the teak wood. But the authorities concerned did not intimate to Mr. G.G.Desai what amount he was required to deposit and when and put off the delivery of the promised teak wood under some pretext or the other. Replying upon the promise of Govt. and the assurance of the Conservator of Forests ~~xx~~ that he would and was bound to receive the afore--said quanitty of teak wood as sanctioned by the Conservator of Forests, Mr. G.G. Desai used his own teak wood out of his own stock and fulfilled the contracts, by making and supply the - requisite furnitue to Govt. If Govt. at the relevant time, had intimated to him that the sanctioned teak wood would not or could not be supplied to him, he would never have used his own teak ~~xx~~ wood out of his own stock, and supplied the needs of Govt., for the obvious reason that the market rates in -- respect of teak wood are always considerably high than the - scheduled rates charged by Govt.

4. After making and supplying the requisite furniture to Govt., during the period from 1944-- to 1946, Mr. Desai -- continued to demand of Govt. the promised supply of teak wood and sleepers to him. Ultimately as the authorities concerned did not intimate to Mr. G.G. Desai what sum he was required to deposit and when, he sent a cheque for Rs. 12,000/- to the Depot Officer, Dandeli on 11-10-46 and another cheque for Rs. 9600/- on 14-2-47 as his estimated price of the promised teak wood. A sum of Rs. 1362-14-8 belonging to him was already -- in deposit with the Depot Officer, Dandeli. He then repeated his demand for the release of the promised quanity of teak wood and teak wood sleepers, by writing letter to the Divisonal Forest officer, N.D. Kanara, Dharwar on 28-12-46. The cheques were duly accepted and were as a matter of fact cashed also in due -- course by Govt in March 1947. But strangely enough Mr. Desai

75

was informed by the Conservator of Forests on 10-4-47 that the said cheque were not " actually enchashed " and that they were then time-barred and would be returned by the Depot Officer, Dandeli. Mr. Desai then brought to the notice of the Conservator of Roests by letter dated 18-4-47, that the cheques had been duly accepted and cashed and that the Govt. should fulfil its promise. The officer in reply intimated that he would olik into the matter and ultimately ended by confirming his decision given on 10-4-47. Mr. Desai then appealed to the Govt. of Bombay against the order of the Conservator of Forests, but the appeal was dismissed on 11-5-48, on the ground that the request for teak wood logs and sleepers was "time barred".

5. The Govt. having undertaken to supply and having sanctioned the afore-mentioned quanityty of teak wood sleepers and teak wood to Mr. Desai Govt. was bound to supply the same to him. Relying on the promise of Govt Mr. Desai had used his own teak wood out of his own stock. He was t us put toheavy loss on account of the refusal by Govt. to supply the sanctioned teak wood. The cheques issued by Mr. Desai were duly accepted and cashed by the Govt. It was not open to Govt. to find fault with Mr. Desai on any ground Mr. Desai was and there plffs are willing even now to pay the price at the scheduled rates existing at the date of sanction and take delivery of the teak wood. As Mr. Desai's request in this respect had been rejected by Govt., hehad to resolve to file a suit for recovery of the promised quantity of teak wood and teak wood sleepers, at the scheduled rates fixed by Govt at thedate of sanction, and for damages, or in the alter -native for compensation for breath of the agreement bo supply the promised and sanctioned quantity of teak wood and teak wood sleepers. The cause of action for the suit arose when the request of Mr. G.G. Desai was ultimately rejected by Govt. i.e. on 11-5-48.

6. This court has special jurisdiction to

try this suit, as the value of the claim in suit is more than Rs. 5000/- and as also the cause of action accruded within the local limits of this court.

6. The value of the suit for the purposes of Court fees is Rs. 57,265-0-0 as shown below:-

Valuation for the main relief:-

Rs. 9600/- the value of 1200 teak wood sleepers at agreed rate of Rs. 8 each.

Rs. 14400-0-0 the value of 60 tons of teak wood at the scheduled rate at the time the agreement i Rs. 240 per ton.

Rs. 2065/- Damages by way of interest at 6 per cent on the deposit amount of Rs. 32962 from 1-4-47 (cheques cashed in march 47) to 1-10-48.

Total 26065/-

Valuation for the alternative relief of compensation for breach of agreement;-

Rs. 19200/- value of 1200 teak wood sleepers at the current rate of Rs. 16 per sleeper.

Rs. 60000/- Value of 60 tons of teak wood at the current market rate of Rs. 1000 per ton.

Rs. 79200/-

Rs. 24000/- Minus the value of the aforesaid quantity of teak wood at the date ofagreement at the scheduled rate.

Rs. 55200/-
Rs. 2065/- Plus interest on the deposit amount as stated above.

Rs. 57265-0-0

Court fees have been paid on Rs. 57265, the value of the alternative relief.

8. The requisite notice under section 80 of the C.P.Code has been given to Govt.

9. The plff prays for:-

(1) The revovery of 1200 teak wood sleepers and of 60 tons ofteak wood on payment by the plffs of the price thereof at the scheduled rates prevailing in 1944 and for Rs. 2065 as damages as specified in para 7 above.

(2) in the alternative, the plff prays for Rs.57265/- as compensation for breach of agreement to supply the aforesaid quantity of teak wood and teak wood sleepers, as specified in para 7 above.

3. Costs of the suit and future interest.

4. Any other relief which the Court may deem fit to grant.

10. The certified copy of the award would be produced at the time of hearing if necessary.

Belgaum, 1-4-50.

SD/-P-

9/7

We plffs. (1) ashadevi w/o Ganapatrao Desai (2) Shamrao Gundo Desai and (3) Gundo Hanamant Desai, state on solem affirmation that what is stated above is tru e to the information received and believed by us to be true

Verified at Belgaum on 11th April 1950.

Sd/-

Belgaum Civil Suit No 128-1950

19/9

The plffs have filed this suit for delivery to them of 1200 Teak-wood Sleepers and 60 tons of Teak-wood logs under an alleged contract of sale by the Forest Department in 1944. In the alternative the plffs claim Rs 57265 by way of damages for breach of Contract by the State of Bombay.

It seems that there was no concluded contract of sale of Teak wood. There was only a conditional offer of sale on certain terms and conditions and subject to stocks being available. The terms and conditions wese never accepted by the inteding purchaser, and he was also informed almost immediately that no stocks were available for sale. The claim for damages is also exaggerated.

The suit is defensible and the defence of the same may be sanctioned on the lines of the accompanying brief.

Defence sanctioned accordingly.

JRH
26-7-51.

Secy A+F.D.

26/7

x 11953
dt 26-7-51.

In the Court of the Civil Judge, S.D.

at Belgaum.

1. Mrs.Sonabai Com. Ganpatrao Desai and others.....Plaintiffs.

Vs.

1. The state of Bombay.....Defendant.

(1) The suit is denied in toto. The allegations made by the plaintiff that they have become entitled to the subject-matter of the suit in certain shares by virtue of an alleged award are denied by the defendant. The plaintiff should be put to strict proof of the same. The plaintiffs have no right to sue.

(2) The Allegetaions made by the plaintiffs in para two of the plaint are denied. There was no concluded contract of sale, between the deceased G.G.Desai on the one hand and the defendant on the other. There were only negotiations and there was a condition of offer to supply the goods. The conditions were never accepted by the said Desai who remained silent for nearly two years after the conditions were communicated to him.

(a) Mr. G.G.Desai the contractors started the negotiations by first writing a letter, dated 14-8-1944, to the conservator of forests asking for 60 Tons of Teak-wood logs and 1200 teak-wood sleepers. He was informed that no teak-wood logs were available and that 1200 teak-wood sleepers may be supplied if available at the rate of Rs.8 per piece. Mr. G.G.Desai did not accept that rate and asked for a concession rate. No concession rate could be allowed. The matter rested there. There was therefore no concluded contract.

(b) Mr. G.G.Desai renewed this request by his letter dated 20-9-44 for supply of 60 Tons of Teak-wood logs only. There was no request for teak-wood sleepers. He was informed on 3-10-44 that 60 tons of the saidd logs would be supplied to him on certain terms and conditions if only they were available in stock. But he never signified his assent to those terms and conditions. He was informed almost immediately that no teakwood logs would be available for being supplied to him. There was thus no concluded contract between the parties for the supply of 60tons of teak-

-wood logs. It is therefore evident that there were only negotiations which did not result in a legal contract.

(3)After the lapse of two years, Mr. G.G.Desai wrote a letter to the Depot officer asking for the release of 60 tons of logs on the strength of correspodence that had taken place in 1944., enclosing a cheque of Rs. 12000 and he again sent a cheque of Rs. 9600 on 17-12-46. and asked for delivery of 1200 sleepers. The Depot Officer referred the matter to the higher authorities. He also wrote a letter to the Divisional Forest Officer on28-12-46. asking for a supply of 60tons of logs and 1200 sleepers on the basis of the said correspondence of year 1944.The matter was referred to the Conservator of Forests who after due inquiry, informed Mr. G.G.Desai that he could not order the release of the materials.G.G.Desai's request was finally rejected on 31-7-47 by the Conservator of Forests. His decision was confirmed by Govt. on 11-8-48.

(4) The mere acceptance of the cheques of Rs.12000 and Rs. 9600 by a subordinate Officer like the Depot Officer who could decide whether the money should be retained or not , could not make any difference to the rights of the parties. The Depot Officer not knowing what correspondence had taken place betweer G.G.Desai and the Conservator of Forests, made a report to the higher authorities. It is true that the cheques had been cashed in March 1947.But that fact cannot have the effect of creating a new contract of sale when none in fact was existence. The payments were vague and not on the basis of specified rates. Hence G.G.Desai was informed that the amount would be refunded to him.

(5) The allegations,made in para 3 of the plant that G.G. Desai used his own teak-wood obtained from other sources for fulfilling his contract,-in-the-hope and belief that Govt. would supply teak-wood to him as requested by him,are denied. The Depot Officer does not know if the contractor Desai used his teak-wood for executing the alleged contract. Desai the contractor did not inform the forest Department in 1944, that he would use his own private teak-wood for the execution of his alleged contract in the hope and belief that the forest department would supply to him the woods asked for, by him. It was only in 1946 that he made such an allegation for the first time.

13 89

allegations made by the plaintiff in para 3 of the ~~plaint that~~ Mr. Desai had offered to deposit the sum that he ~~was~~ be ordered to deposit and to take deliveryof the materials ~~and~~ that the authorities concerned did not intimate to him as ~~to what amount~~ was required to deposit and avoided delivery, ~~are~~ denied by this defendant. There was no concluded contract ~~between~~ Desai and the defendant. The question of asking for deposit and offering delivery of goods did not arise. Desai had never in fact, offered to deposit money for price till December 1946

(7) The allegations made in para 5 of the plaint that ~~Desai~~ Desai suffered heavy loss on account of defendant's refusal to supply the teak-wood, are false. They are denied by the ~~de~~ defendant. In the absence of any legal contract of sale, the defendant cannot be held liable for any loss caused to the ~~plaintiff~~ plaintiff by the use of his own teak-wood, alleged to have been purchased at a higher rate.

(8) Assuming but not admitting that there was a concluded contract ~~between~~ between the parties in 1944, the conduct of G.G. Desai in sitting silent for two years thereafter would show ~~that~~ that he had abandoned the contract and had also released Govern-ment from all the obligations ~~thereunder~~ there under. When Prices had gone up and circumstances had changed in December 1946 Desai wanted to try for the ~~renewal~~ renewal of the abandoned contract. He had no right to do so.

(9) Without prejudice to the above contentions this Deft contends that the damages claimed by the plffs are too high and quite unreasonable. The current rate relied upon by the plffs presumably means the rate at the date of filing the suit. But the relevant rate would not be the rate at the time of filing the suit but that prevailing at the time of the alleged breach of contract. The cause of action stated in the plaint is not correct. Since the plffs' claim had been rejected by the Conservat-or of Forests in Definite Terms on 31-7-1947.

(10) Plffs' claim for delevery of goods and for damages for breach of contract is barred by limitation.

For all these reasons it is submitted that plffs' suit should be dismissed with costs.

No. 13084

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 14-8-1951.

Subject :- Civil Suit No. 128 of 1950

Memorandum:

With reference to his letter No. J229 dated the 6th August 1951 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Belgaum is informed, that two copies of the ~~revised~~ approved draft are forwarded herewith.

Letter of Divisional Judge returned with the letter under ref. as noted. The points of leave referred to have been taken

For Remembrancer of Legal Affairs.

To

The District Government Pleader,
Belgaum

Drafted to Sjn
13/8

HSP/4/7

Suits : .

Belgaum.

For recovering 1,200 teak-wood sleepers and 60 tons of teak-wood logs or Rs. 79,200 for their value.

1733.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 12282.

Bombay Castle, 31st July 1951.

Endorsement from the Collector of Belgaum, No. L.A.W.-747, dated the 16th January 1951—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.
CIVIL SUIT No. 128 OF 1950.
Ashadevi w/o Ganpatrao Desai and others ... Plaintiffs :
versus
The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 12045, dated the 27th July 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

Original for

L Leg. H 118—1

[P.T.O.

To

*The Agriculture and Forests Department,
*The Collector of Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).
The Chief Conservator of Forests, Bombay State, Poona
*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

Issued
17/9

Subtd. after issue
file in S. Belgaum /57 Comm

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BELGAUM CIVIL SUIT NO. 128 OF 1950.

Chronological Statement of Facts.

The plaintiffs have filed this suit for recovering 1,200 teak wood sleepers and 60 tons of teak wood logs or Rs. 79,200 for their value. In the alternative the plaintiffs' claim Rs. 57,265 by way of damages for alleged breach of contract for selling and supplying teak wood to the plaintiffs as above.

2. One Ganpatrao Gundo Desai, of Belgaum, was a Timber Merchant. He also used to accept contracts for the supply of furniture to Government offices. The teak wood needed for making the furniture was purchased by the contractor, at times from the Government of Bombay (Forest Department) at scheduled rates. In the year 1944 the said Shri G. G. Desai had taken contracts for the supply of furniture to the Income Tax Office, Public Works Department Office, Excise Collector's Office, C. I. D. Office and Post and Telegraphs Office. In that connection the contractor was in need of teak wood. The plaintiffs' case is that the contractor asked the Forest Department for 1,200 teak wood sleepers, and 60 tons of teak wood logs to be supplied to him at the scheduled rates. The plaintiffs further allege that the Conservator of Forest had sanctioned the demand by two orders, dated the 15th August 1944, and the 3rd October 1944 respectively. The contractor was to take delivery of the goods from the Timber Depot at Dandeli. The plaintiffs alleged that there delay in giving the delivery of goods, and hence in the meanwhile the contractor used his own teak wood, which had been already obtained by him from other sources at higher prices for completing the above contracts for the supply of furniture. The plaintiffs alleged that the Forest Department did not inform the contractor what amount he had to pay for the price of the goods to be supplied to him. On 11th October 1946 the contractor sent one cheque for Rs. 12,000 towards the price of the 60 tons of teak wood logs. On 14th February 1947 he sent a cheque for Rs. 9,600 towards the price of the 1,200 teak wood sleepers. These cheques were cashed in March 1947. But later on Shri Desai was informed that the teak wood sleepers and logs would not be supplied to him. This decision was communicated to Shri Desai on 10th April 1947. There was an appeal to the Government against the decision. But the Government confirmed the decision on 11th May 1948.

3. Shri G. G. Desai is dead. Plaintiff No. 1 is his widow. Plaintiff No. 2 is his brother and plaintiff No. 3 is his father. It is alleged in the plaint that the three plaintiffs are entitled to the estate of the deceased contractor under an award, and hence they have filed this suit for the reliefs set out above. Notice of suit was given by the plaintiffs under section 80, Civil Procedure Code, on 1st October 1948 and the suit was filed in Court on 1st April 1950.

4. The contention of the Forest Department seems to be that there was no regular and concluded contract for the sale of the teak wood to Shri G. G. Desai. The Forest Department had only informed the contractor

that teak wood as above would be supplied to him if the same is available at the Dandeli Depot. But it was not available and the contractor had been informed accordingly. The contractor had also not accepted the other terms and conditions of the offer. Nothing more happened for two years. The contractor did not send the two cheques till more than two years after the date of the alleged contract. The Forest Department had offered to refund to him the amount of the two cheques, alleging that there was no completed contract between the parties.

The plaintiffs' claim the delivery of the teak wood or Rs. 79,200 for their price, at the scheduled rates of 1944. The plaintiff also claim Rs. 2,065 for interest on the amount of the price for delay in payment. In the alternative the plaintiffs claim 57,265 by way of damages being the difference between the contract price and the market price at the date of the alleged breach of contract.

Grounds of Defence.

1. In paragraph 1 of the plaint the plaintiffs have alleged that there was an award as between the plaintiffs Nos. 1 to 3 in respect of the estate of the deceased Shri G. G. Desai, and that the three plaintiffs had become entitled to the subject matter of the present suit in certain shares. These allegations should be denied and the plaintiffs should be put to the strict proof of the same. The plaintiffs' right to sue should be disputed.

2. The plaintiffs' claim is based on alleged contracts for sale and supply of 1,200 teak-wood Sleepers, and 60 tons of teak-wood logs, by the Forest Department to Shri Ganpatrao Gundo Desai. It is contended that the Forest Department committed a breach of these two contracts by refusing to supply the goods to Shri G. G. Desai, although the latter had sent two cheques for the total amount of Rs. 21,600 towards the price of the goods. It should be contended in the first place that there was no concluded contract of sale between the parties. There were only negotiations, and there was a conditional offer to supply the goods. The conditions were never accepted by Shri G. G. Desai, who remained silent for nearly two years after the conditions were communicated to him. In this connection the following facts should be noted and should be relied upon to prove the contention that there was no concluded contract of sale of goods.

The plaintiff applied to the Conservator of Forest by his letter, dated the 14th August 1944 for supply of 60 tons of teak-wood logs, and 1,200 teak-wood sleepers (rejected as unsuitable by the Civil Supplies Department) at concession rates. He also prayed that he may be allowed to pay the cost by suitable instalments or in the alternative "as he would utilise the stock" (*See* p. 1 of File 1.).

That letter was sent to the Divisional Forest Officer Shri N. D. Kanara for Report if the Material was available. Ultimately the Conservator of Forests decided on 30th August 1944 that rejected material was to be reserved for the use of the Military Engineering Service and hence no swan logs of wood could be supplied to the applicant. But he further intimated

that 1,200 sleepers may be sold to the applicant at the rate of Rs. 8 per piece, if available. Shri Desai was informed accordingly. He then wrote to the Conservator again on the 8th September 1944 asking for a reduction in the price of sleepers. That means that he did not accept the rate of Rs. 8 per piece. On 14th September 1944 Shri Desai was informed that the rate could not be reduced. See letter at p. 4. There was no further letter from Shri Desai accepting the rate of Rs. 8 per piece.

On 20th September 1944 Shri Desai again wrote to the Conservator informing him that he had taken certain furniture contracts and requesting that 60 tons of teak-wood logs may be supplied to him at a concessional rate. Page 5 of the file. After an inquiry he was informed on 3rd October 1944 that his request for the supply of 60 tons of logs of wood (rejected by the Supply Department) would be granted provided the material was available from stock and provided that the contractor would agree to make his own arrangements for transport, for which no wagons could be allotted to him. He was also informed that the price to be charged would be 33⅓ per cent. over and above the Departmental rate. The contractor was asked to state if the enhanced rate and the other conditions were acceptable to him. If they were acceptable to him he was to approach the Divisional Forest Officer Shri N. D. Kanara for further steps in the matter. It should be urged that this letter was of the utmost importance in this case. It was referred to in the plaint itself. It shows that the offer was conditional. The first condition was that stocks should be available. The second was that the price was to be substantially higher than the departmental price, although the contractor wanted a concessional price. The third condition was that no wagons would be allowed for transport of the material and the purchaser would have to make his own arrangements for transport of the goods. All these conditions were very vital to the contract.

Within 10 days thereafter it was found that no stocks were available for sale, and Shri Desai was informed accordingly on 13th October 1944. See letter at page 11. He was also informed, by way of a concession, that if and when logs were available they would be supplied.

Nothing further happened till October 1946. From the facts recited above it will be quite clear that there was no final contract of sale of teak-wood between the parties. By his first letter, dated the 14th August 1944 the contractor asked for 60 tons of teak-wood logs and 1,200 sleepers. He was informed that no teak-wood logs were available and that 1,200 teak-wood sleepers may be supplied at the rate of Rs. 8 per piece. The contractor did not accept that rate and asked for a concession rate. No concession rate could be allowed. The matter rested there. Quite clearly there was no concluded contract. The contractor renewed his request for supply by his letter, dated the 20th September 1944. This time he asked for only 60 tons of teak-wood logs. There was no request for teak-wood sleepers. He was informed that the 60 tons of logs would be supplied to him on certain terms and conditions if they were available. The contractor never signified his assent to those terms and conditions. He was also informed almost immediately that no

teak-wood logs would be available for being supplied to him. Thus there was clearly no concluded contract between the parties for the supply of 60 tons of teak-wood logs. There were only negotiations which did not result in a legal contract.

On the 11th October 1946 Shri G. G. Desai wrote a letter to the Depot Officer, Dandeli, and asked for the release of the 60 tons of logs as soon as possible on the strength of the correspondence which had taken place in 1944. He enclosed a cheque for Rs. 12,000 and also referred to an amount of Rs. 1,400 which was said to be standing to his credit already in connection with some other transactions. Shri Desai also sent a cheque for Rs. 9,600 to the same officer on 17th December 1946 and asked for delivery of 1,200 sleepers. The Depot Officer had to refer the matter to higher authorities. Shri Desai also wrote a letter to the Divisional Forest Officer on 28th December 1946 and asked for the supply of 60 tons of logs and 1,200 sleepers on the basis of the correspondence between the parties which had taken place in 1944. The matter was then referred to the Conservator of Forest. After an inquiry into the matter the Conservator of Forests informed Shri Desai, that he could not order the release of the materials after the lapse of a period of two years. The contractor's request was finally rejected on 31st July 1947 by the Conservator. His decision was confirmed by the Government on 11th May 1948.

The plaintiffs might rely on the circumstance that the two cheques for Rs. 12,000 and Rs. 9,600 sent by Shri Desai to the Depot Officer, Dandeli, were not rejected or returned to Shri Desai at once. They were accepted and were cashed. It should be urged that the fact that the cheques were not rejected immediately could not make any difference to the rights of the parties. In the first place it is significant that the two cheques were sent to a subordinate officer like the Depot Officer, who could not decide whether the money should be retained or not. He did not know what correspondence had taken place between Shri Desai and the Conservator, in the matter. Hence he retained the amount and made a report to the Higher authorities. It seems that at one time Shri Desai had been informed by mistake that the two cheques had not been cashed. That was not correct. The cheques had been cashed in March 1947. But that fact cannot have the effect of creating a new contract of sale if there was none in existence already. The payments were vague and not on the basis of a specified rate. Shri Desai was informed later that the amount would be refunded to him.

The plaintiffs have alleged in paragraph 3 of the plaint that Shri Desai used his own teak-wood obtained from other sources for fulfilling his contracts, in the hope and belief that the Government would supply teak-wood to him as requested by him. It should be urged that 'the defendant does not know if the contractor had used his own teak-wood for executing those contracts. But it should be made clear that the contractor had not informed the Forest Department in 1944 that he would use his own private teak-wood for the execution of his contracts in the hope and belief that the Forest Department would supply to him the wood asked for by him. Shri Desai made that allegation only in 1946 for the first time in reply to the

Conservator's inquiry as to how many Government Departments had got outsanding contracts with him for the supply of furniture.

In paragraph 3 of the plaint the plaintiffs have alleged that Shri Desai had offered to deposit the sum that he might be ordered to deposit, and to take delivery of the materials; but that the authorities concerned did not intimate to him what amount he was required to deposit and avoided giving delivery. These allegations should be specifically denied. It should be urged that as there was no concluded contract between the parties the question of asking for a deposit and offering delivery of the good did not arise. Shri Desai had also never offered to deposit money for price till December 1946.

The plaintiffs' allegation in paragraph 5 that Shri Desai was put to a heavy loss on account of the defendant's refusal to supply the teak-wood is false and should be denied. In the absence of a legal contract of sale the defendant cannot be held liable for any loss caused to the plaintiff by the use of his own teak-wood alleged to have been purchased at a higher price.

It should be urged, in the alternative, that assuming that there was a concluded contract between the parties in 1944 the conduct of Shri Desai in sitting silent for two years thereafter would show that he had abandoned the contract and had also released the Government from all the obligations thereunder. In December 1946 when the prices had gone up and circumstances had changed Shri Desai wanted to try to revive the abandoned contract. But he had no right to do so.

Without prejudice to the above contentions it may also be urged that the damages claimed by the plaintiffs are too high and unreasonable. The plaintiffs have relied upon the Current rate of teak-wood logs and sleepers. The "Current rate" presumably means the rate at the date of filing the suit. But the relevant rate would not be the rate at the time of filing the suit, but that prevailing at the time of the alleged breach of contract. The plaintiffs' statement in paragraph 5 of the plaint that the cause of action arose on 11th May 1948 when the Government rejected the claim is not correct. The plaintiffs' claim had been rejected by the Conservator of Forests in definite terms on 31st July 1947.

The plaintiffs' claim for delivery of goods and for damages for breach of contract is barred by Limitation.

For all these reasons it should be urged that the plaintiffs' claim fails and that the suit should be dismissed with costs.

Sp. Suit No. 125 of 1950.

I S S U E S.

1. Do plffs prove that they have the right to bring this suit?
2. Do they prove that the Conservator of Forests had agreed to supply 1200 teak wood of sleepers &r 60 tons of teak as alleged in para 3 of the plaint to G.G. Desai ?
3. Was there is a concluded contract between G.G. Desai and the deft ?
4. Does deft prove that there was the abandonment of the contract on the part of the plffs?
5. Does plffs prove that the Deft committed a breach of the contract ?
6. Are plf s entitled to get 1200 teak wood sleepers and 60 tons of teak wood from the Deft ?
7. Are plffs entitled in addition to get damages of Rs 2000/- from the Deft ?
8. Are plff's entitled to get Rs. 57205/- as compensation from the Deft ?
9. Is the suit barred by limitation ?
10. What order ?

20-9-1951. Civil J.

With prejudice

Reg.C.S.No. 128 of 1950

25

In the court of Civil Judge, S.Dn., at Belgaum.

1. Ashadevi W/o. Ganapatrao Desai and others. ... ... Plffs.

Vs.

1. State of Bombay. ... . Deft.

In this, the plaintiffs' proposed the following terms for compromise in this suit:-

1. The plaintiffs have filed this suit for :-

(a) recovery of 1200/- teak-wood sleepers and 60 tons of teak wood, on payment by the plffs of the price thereof at the scheduled rates prevailing in 1944. i.e. at Rs. 8/- per sleeper and Rs. 240/- per ton of teak-wwod, respectively.

(b) recovery of Rs. 2065/- as damages by way of interest and

(c) costs of the suit.

2. In the alternative, the plaintiffs have prayed for:-

(a) recovery of Rs. 57,265/- as compensation for breach of contract to supply the above-mentioned quantities of teak-wood, i.e. the difference in the prices of the said wood at the scheduled rate and the current market rate plus interest on the amount deposited with the Government, and

(b) costs of the suit.

3. The plaintiffs are willing to accept the above mentioned quantities of teakwood at the scheduled rates stated in para 1 above and interest of Rs. 2065/- and proportionate costs. The plaintiffs will not press their alternative claim to the sum of Rs. 57,265/- by way of damges stated in para 2 above.

Signed and dated 26th February 1952.

1. Sd. Plff No. 1

2. Sd. Plff No. 2

3. Sd. Plff No. 3

D/57

No. J. 508 of 1952. 55
Belgaum, 27th August 1952.

28

To

The Remembrancer of Legal Affairs, Bombay

Subject:- Civil Suit No. 128 of 1950
Ashadevai Kom Ganapatrao and others
Vs.
The State of Bombay.

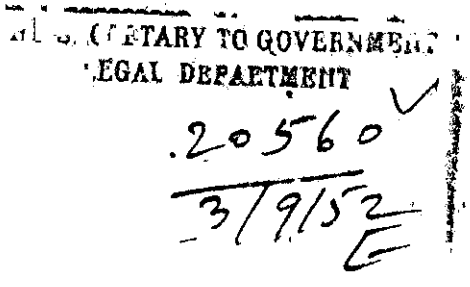
Sir,

With reference to the subject noted above I have the honour to inform you that the Civil Suit No. 128/1950 on the file of the Civil Judge, S.Dn., Belgaum was decided by the court on 26-8-1952 and the order of the court runs thus:-

" The suit is dismissed. Plffs do pay costs of the suit to the deft and bear their own costs."

Yours faithfully,

Dist.Govt.Pleader, Belgaum.



H/ Belgaum C.S. No. 128/50
is dismissed with costs.
30 Result may be recorded
after copy of judgment
is read.
Till then this may be
filed in H. Reg 13/5/1.

AE
3/9

DE (MS)
3/9